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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,791	10/18/2005	Gabrielle Sore	278073US0PCT	6093
22850	7590	01/07/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MATTISON, LORI K				
ART UNIT		PAPER NUMBER		
1619				
NOTIFICATION DATE		DELIVERY MODE		
01/07/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/553,791

Applicant(s)

SORE ET AL.

Examiner

LORI MATTISON

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 13-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 13-21, and 24-31, drawn to a process for treating visible, tactile, or both visible and tactile irregularities in human skin, said method comprising: a) topically applying a first composition to skin in need thereof wherein the composition comprises at least 20% by weight of urea in a physiologically acceptable medium, b) maintaining the first composition in contact with the skin for between 5 minutes and 6 hours, and c) removing the composition by rinsing.

Group II, claim(s) 22, drawn to a process for treating visible, tactile, or both visible and tactile irregularities in human skin, said method comprising applying a second composition to the skin, wherein the second composition comprises from 0.5% to 10% by weight of urea in a physiologically acceptable medium, before applying the first composition to the skin.

Group III, claim(s) 23, drawn to a process for treating visible, tactile, or both visible and tactile irregularities in human skin, said method comprising applying a third composition to the skin, wherein the third composition comprises from 0.5% to 10% by

weight urea in a physiologically acceptable medium, after removing the first composition.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: They do not share the same structural elements(s) that define the special technical feature necessary to specify a contribution over the prior art. The step in common with Groups I-III is claim 13; the step of claim 13 is known in the art. US Publication No. 2003/0095990 (Hua, 2003) teaches a facial wash which may be used to treat and prevent acne (paragraph 159) and remove sebum (i.e visible and tactile irregularities of the skin) (paragraph 1). Hua teaches that the composition may comprise 0-30% humectants (paragraph 15) in which urea is specifically disclosed among a list of 4 exemplary humectants. Paragraphs 161 and 181 of Hua discloses washing with the compositions of the invention, meaning that the composition was applied to the skin. This point is further supported by the disclosure that the compositions of the examples provided a "feeling" (Examples 2 and 4). With regard to the fact that the formula was rinsed off, Hua discloses that the composition "rinses well" (paragraph 6), and "rinses quickly" (paragraph 8), and can cleanse and remove makeup in one step and leaves skin feeling clear after washing (paragraph 161) indicating that the composition was removed by rinsing. Hua does not teach the duration in which the composition permitted to be in contact with the skin. US Patent No. 6,447,789 (Banks, 2002) teaches that skin cleanser [which may comprise urea (Col.3, lines 15-20)], is most preferably left on the

skin between 15 and 20 minutes and is removed with water to dissolve and rinse away the formulation (Col. 4, lines 5-10). Thus, the steps and composition recited in claim 13 were known at the time the invention was made and cannot be considered a special technical feature.

An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: (1) a product and a process specially adapted for the manufacture of said product; (2) a product and a process of use of said product; (3) a product, a process specially adapted for the manufacture of the said product, and a use of the said product; (4) a process and an apparatus or means specifically designed for carrying out the said process; or (5) a product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process. **If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims. See 37 C.F.R. 1.475.**

In this case, the application recites three different processes for treating visible, tactile, or both visible and tactile irregularities in human skin; the end points in Groups I, II and III are distinct. Therefore the main invention will be considered Group I.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Compound: a) ethanol, b) isopropanol, c) glycerol and 4) propylene glycol as in claims 18 and 19; ELECT ONE.

Thickener: a) xanthan gum, b) acrylic acid homopolymer, c) acrylic acid copolymer, d) crosslinked acrylic acid homopolymer, e) crosslinked acrylic acid copolymer, f) polyacrylamide, g) acrylamidomethylpropanesulfonic acid homopolymer, h) acrylamidomethylpropanesulfonic acid copolymer, and i) a cellulose derivative as in claim 21; ELECT ONE.

Method Purpose: a) attenuate one or more of wrinkle, fine line, pigmentation mark, and an acne scar, b) unblock skin pores, and c) remove one or more layers of epidermis or dermis of the skin as in claims 24, 25, and 28; ELECT ONE.

Application location: a) face, b) neck, c) neckline, d) hands and e) back as in claim 26; ELECT ONE.

In need thereof: a) wrinkles, b) lines, c) pigmentation marks, d) acne scars, and e) unblocking pores as in claims 29 and 31; ELECT ONE.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims

subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Group I: claim(s) 13, 14, 15, 16, 17, 20, 27, and 30. Group II: claim(s) 22; Group III: claim(s) 23.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and PCT Administrative Instructions, Annex B, Part I(f)(1)(B)(2), the species are not art- recognized equivalents.

When alternatives of chemical compounds are claimed, they shall be regarded as being of a similar nature where all alternatives have a common property or activity, and either a significant structural element is shared by all of the alternatives, or all of the alternatives belong to a recognized class of chemical compounds in the art to which the invention pertains. The words "significant structural element is shared by all of the alternatives" refer to cases where the compounds share a common chemical structure which occupies a large portion of their structures, or in case the compounds have in common only a small portion of their structures, the commonly shared structure

constitutes a structurally distinctive portion in view of existing prior art, and the common structure is essential to the common property or activity. The structural element may be a single component or a combination of individual components linked together. The words "recognized class of chemical compounds" mean that there is an expectation from the knowledge in the art that members of the class will behave in the same way in the context of the claimed invention. In other words, each member could be substituted one for the other, with the expectation that the same intended result would be achieved.

In the instant case, the thickeners do not share a significant structural element.

According to the Sigma Aldrich online catalog

(http://www.sigmaaldrich.com/catalog/ProductDetail.do?N4=G1253|SIGMA&N5=SEARCH_CONCAT_PNO|BRAND_KEY&F=SPEC; accessed 1/04/2009; please see citation), xanthan gum is an anionic polysaccharide comprising a β -(1 \rightarrow 4)-D-glucopyranose glucan backbone with side chains of (1 \rightarrow 3)- α -D-mannopyranose-(2 \rightarrow 1)- β -D-glucuronic acid-(4 \rightarrow 1)- β -D-mannopyranose on alternating residues, while methyl cellulose (a cellulose derivative) dissolves in water, undergoes reversible gelation upon heating, non-ionic, does not complex with ionic species and is surface active and enzyme resistant. According to the Sigma Aldrich online catalog

(http://www.sigmaaldrich.com/catalog/ProductDetail.do?N4=92560|SIGMA&N5=SEARCH_CONCAT_PNO|BRAND_KEY&F=SPEC, accessed 1/04/2009; please see citation), polyacrylamide is taught to be a nonionic water soluble polymer with the chemical formula $(\text{NH}_2\text{COCHCH}_2)$ monomeric unit. There is no evidence that the thickeners

share a significant structural element. Therefore, inventive unity among these species is lacking.

No structural information could be found for acrylic acid homopolymer, acrylic acid copolymer, crosslinked acrylic acid homopolymer, crosslinked acrylic acid copolymer, acrylamidomethylpropanesulfonic acid homopolymer and acrylamidomethylpropanesulfonic acid copolymer on the Sigma website.

In the instant case, the alcohols and polyols do not share a significant structural element. According to the Sigma website, the linear formula for ethanol is $\text{CH}_3\text{CH}_2\text{OH}$ (http://www.sigmaaldrich.com/catalog/ProductDetail.do?N4=459844|SIAL&N5=SEARCH_CONCAT_PNO|BRAND_KEY&F=SPEC; accessed 01/04/2009, please see citation). The linear formula for isopropanol is $(\text{CH}_3)_2\text{CHOH}$ (Sigma website, http://www.sigmaaldrich.com/catalog/ProductDetail.do?N4=650447|ALDRICH&N5=SEARCH_CONCAT_PNO|BRAND_KEY&F=SPEC, accessed 01/04/2009, see citation). The linear formula for glycerol is $\text{HOCH}_2\text{CH}(\text{OH})\text{CH}_2\text{OH}$ (Sigma website; http://www.sigmaaldrich.com/catalog/ProductDetail.do?N4=G5516|SIGMA&N5=SEARCH_CONCAT_PNO|BRAND_KEY&F=SPEC, accessed 1/04/2009, please see citation). The linear formula for propylene glycol is $\text{CH}_3\text{CH}(\text{OH})\text{CH}_2\text{OH}$ (Sigma website; http://www.sigmaaldrich.com/catalog/ProductDetail.do?N4=P4347|SIAL&N5=SEARCH_CONCAT_PNO|BRAND_KEY&F=SPEC, accessed 01/04/2009, please see citation). There is no evidence that the alcohols and polyols share a significant structural element. Therefore, inventive unity among these species is lacking.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORI MATTISON whose telephone number is (571)270-5866. The examiner can normally be reached on 8am-6pm (Monday-Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571)272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LORI MATTISON/
Examiner, Art Unit 1619

/Lora E Barnhart/
Primary Examiner, Art Unit 1651